

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05-CR-00003-RJC-DCK

USA

v.

TERRY DONNELL JOHNSON

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ORDER

THIS MATTER is before the Court upon motion of the defendant pro se challenging his career offender sentence in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). (Doc. No. 65).

The defendant filed the instant motion in his criminal case about the same time as he filed a motion to vacate pursuant 28 U.S.C. § 2255, (Doc. No. 67), alleging the same error. The Court subsequently dismissed the § 2255 as an unauthorized successive collateral attack. (Doc. No. 68). Additionally, the Fourth Circuit has held that courts lack jurisdiction to consider untimely challenges to career offender sentences in light of Simmons. Whiteside v. United States, 775 F.3d 180 (4th Cir. 2014). The defendant's conviction became final years before he raised this issue. [compare Doc. No. 59: Opinion (affirming career offender sentence) with Doc. No. 65: Motion].

IT IS, THEREFORE, ORDERED that the defendant's motion, (Doc. No. 65), is **DENIED**.

The Clerk is directed to certify copies of this order to the defendant, counsel for the defendant, and to the United States Attorney.

Signed: October 13, 2016



Robert J. Conrad, Jr.
United States District Judge

